

REMARKS/ARGUMENTS

The Office has identified the following groups and is requiring an election of one of the same:

Group I: Claims 1-5, drawn to a culture media;  
Group II: Claims 7-11, drawn to a method for making a culture media; and  
Group III: Claims 12-13, drawn to a method for culturing a microorganism.

Applicants elect, with traverse, **Group I**, Claims 1-5, for examination.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Office if restriction is not required (MPEP §803). The burden is on the Office to provide reasons and/or examples to support any conclusion in regard to patentable distinction (MPEP §803). Moreover, when citing lack of unity of invention in a national stage application, the Office has the burden of explaining why each group lacks unity with the others (MPEP § 1893.03(d)), i.e. why a single general inventive concept is nonexistent. The lack of a single inventive concept must be specifically described.

The Office alleges that Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The groups do not contain a special technical feature which contributes over the prior art. In support, US 6258586 teaches cellulose gel culture media (abstract, entire reference).

Annex B of the Administrative Instructions under the PCT, paragraph b (Technical Relationship), states, emphasis added:

The expression “special technical feature” is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, *considered as a whole*, makes over the prior art. The determination is made on the contents of the claims as *interpreted in light of the description* and drawings (if any).

Applicant respectfully submits that the Office did not consider the contribution of each invention, **as a whole**, in alleging the lack of a special technical feature over the cited reference. Applicant also respectfully submits that the Office has not provided any indication that the contents of the claims **interpreted in light of the description** were considered in making this allegation. Therefore, the Office has not met the burden necessary to support the assertion of a lack of unity of the invention.

Accordingly, the requirement for restriction is no longer tenable and should be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, L.L.P.



---

Benjamin A. Vastine, Ph.D.

Registration No. 64,422

Customer Number

**22850**

Tel. (703) 413-3000  
Fax. (703) 413-2220  
(OSMMN 07/09)